

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RICHARD CHARLES KOHLER,

No. 6:21-cv-01246-JR

Plaintiff,

ORDER

v.

OREGON DEPARTMENT OF
CORRECTIONS, CORPORAL HANNON,
And OFFICER RODGER TEAL,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge Russo issued a Findings and Recommendation on September 9, 2022, in which she recommends that this Court deny Defendants' Motion for Summary Judgment as to PLRA exhaustion and grant the Motion in all other respects. F&R, ECF 28. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiff filed timely objections to the Magistrate Judge's Findings and Recommendation. Pl. Obj., ECF No. 30. When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Plaintiff's objections and concludes that there is no basis to modify the Findings and Recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings and Recommendation.

Plaintiff's objections essentially seek to clarify that he intended to sue Defendants Hannon and Teal in their individual—not official—capacities. Consistent with Judge Russo's F&R and Plaintiff's objections, the Court clarifies that the case will proceed against both Defendants in their individual capacities. *See* F&R 14 (“[D]efendants Hannon and Teal are entitled to summary judgment to the extent plaintiff sues them in their official capacity.”); *Ogan v. Milholland*, No. CV-06-317-RHW, 2008 WL 4534207, at *1 (E.D. Wash. Oct. 3, 2008) (“Where it is unclear from a *pro se* complaint whether defendants are named in their personal or official capacities, a court may conclude that individual defendants were named in their personal capacities.”)(citing *Soffer v. Costa Mesa*, 798 F.2d 361, 363 (9th Cir.1986)).

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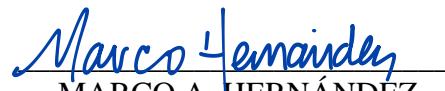
CONCLUSION

The Court ADOPTS Magistrate Judge Russo's Findings and Recommendation [28].

Defendant's Motion for Summary Judgment [21] is denied as to PLRA exhaustion and granted in all other respects.

IT IS SO ORDERED.

DATED: November 10, 2022.



MARCO A. HERNÁNDEZ
United States District Judge